

Simple consensual procedure between the principle of competition and the
urgency of urgency

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Abstract:

We need to change our beliefs about related regulatory actions With public transactions in Algeria, The fact that this is related to the pumping of huge public funds within the expenses of the state covering public projects and public service requirements.

Our study is to clarify the problems posed by simple consensual procedures as a way of concluding public transactions, both in terms of its impact on the principle of competition, and the similarities of the legal text within the urgency of the matter, which calls for considering giving more guarantees on access to public orders in accordance with its principles as well as rationalizing expenses, and removing confusion over the regulatory text.

Keywords: Conclusion of public transactions; simple consensual procedure; competition; Urgency of urgency.

ملخص:

لقد بات من اللازم تغيير معتقداتنا حول إجراءات تنظيمية متعلقة بالصفقات العمومية في الجزائر، كون هذا الأمر متعلق بضخ أموال عمومية هائلة في إطار نفقات الدولة التي تغطي المشاريع العمومية ومستلزمات الخدمة العمومية. وتهدف دراستنا لتوضيح الإشكالات التي يطرحها اجراء التراضي البسيط كطريق لإبرام الصفقات العمومية سواء من ناحية تأثيره على مبدأ المنافسة، ومتشابهات النص القانوني ضمن حالة الاستعجال الملح، والتي تدعو الى التفكير حول إعطاء أكثر ضمانات حول الوصول للطلبات العمومية وفق مبادئها وكذا ترشيد النفقات، وإزالة اللبس على النص التنظيمي.

كلمات مفتاحية: ابرام الصفقات العمومية، اجراء التراضي البسيط، المنافسة، الاستعجال الملح

1- Introduction

The Algerian legislature has set the legal framework for all aspects of the public deal. as a necessity for many purposes, most notably the protection of public money, Through the creation of multiple mechanisms to monitor the soundness of its disbursement, including the establishment of rules guaranteeing transparency in management dealings and equality among all economic clients and guaranteeing the effectiveness of public maintenance, as well as ensuring the protection of transactions through a kind of balance between public and private interests to reduce reconciliatory conflict between the parties to the contractual relationship .

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Presidential Decree No. 15-247 was the result of the economic crisis in 2015, following Algeria's years of well-being during the period of the rise in the oil index. This amendment incorporated the codification of the mandates of the Public Utility.

These transactions are concluded in accordance with the procedure of solicitations as a general rule in which they follow formalities in order to protect public money and the effectiveness of public requests Procedures must take into account the principles of free access to public applications, equal treatment of candidates and transparency of procedures, while respecting the provisions of Presidential Decree 15-247 on the regulation of public transactions and the mandates of the General Annex; The regulator of the Transactions Act also gave an exception to the general rule of conclusion, the procedure of consent in the forms of simple consent and consent after consultation ².

The aim of our study is to identify the procedure of simple consent and the problems it poses in terms of influencing the effectiveness of public requests and the proper functioning of public money in the absence of the principle of competition and equality in the procedure of the size of simple consent which in some operations requires large sums may equal or exceed 10,000,000,000 dinars on the one hand and, on the other hand, the urgent urgency that raises many questions about the similarity of the urgency clauses within the simple consensus procedure and the urgent urgency of the special procedures in article 12, This is a matter of thought and consideration in this ambiguity and ambiguity at the level of the organizational text of this situation.

Thus, if we start from two legal rules, the first based on the observance of competition and equality to ensure the effectiveness of public requests and the proper

use of public money, and the second with the adoption of a state of urgency in the procedure of simple consent, notwithstanding a state of urgency within the special procedures, we will formulate the problem of our study as follows:

What legal data has been adopted by the regulator of the Public Transactions Act in Presidential Decree No. 15-247 to provide guarantees for a procedure in which formal competition advocacy is denied on the one hand, and on the other hand to adopt a state of urgency as a justification for recourse to a simple consent procedure?

We will answer this problem according to two elements:

- 1 - simple consent procedure and its impact on competition.
- 2 - urgent urgency problem in simple consent procedure.

In our study, we relied especially on the analytical and comparative curriculum.

2. Simple consensus procedure and its impact on competition

The regulator of the Law on Public Transactions has been paying its attention to fundamental considerations that are part of the general principles governing the effectiveness of public requests and the proper use of public money. ", i.e., rationalize expenditures and this is in order to move away from all suspicion of corruption, confirmed by the legislature in the Anti-Corruption Act 06 - 01 Transparency and Competition in the Public Sector ", establishing basic rules on transparency and competition within preventive measures in the public sector ³.

2.1. The problem of competition in a simple consensual procedure

The original public transaction is to perform solicitations as a general rule and can be resorted to through the consensual procedure exceptionally ⁴.

Under article 41 of Presidential Decree 15-247, the legislator did not give a precise definition of consent, but considered it to be the procedure for allocating a transaction to a single contractor without the formal call for competition. Consent can take the form of simple consent or consent after consultation and is regulated by all appropriate written means ⁵.

What is noted here is that the legislator has given the administration the freedom to contract away from the stringent formalities of the provisions of this decree, which must be followed in requests for proposals as a general rule in the conclusion of public transactions.

This basis, which freed the contracting interest from the procedural rules known in the requests for proposals, opens the way for the Department to negotiate with those it deems capable and eligible to undertake the process it wishes to complete, thus demonstrating the flexibility of advocacy in the method of compromise compared to the requests for proposals ⁶.

2.1.1 Lack of competition in the form of simple consent

There is no competition in all cases of simple consent mentioned exclusively in the new decree ⁷, and therefore what justification has been laid down by the legislature for resorting to the extraordinary procedure?

When reading in the text of article 49, Algerian legislation regulates transactions 15-247 granting the contractor's interest not to follow formal procedures relating to requests for proposals. This is among 6 cases⁸:

- Because of the monopolistic status of the implementation of services by the economic agent, or to protect exclusive rights or technical, cultural and artistic considerations.
- Urgent urgency, reasoned by risk.
- A dedicated emergency catering situation to ensure that people's basic needs are met.
- If it relates to a priority project of national importance of an urgent nature, if the amount of the transaction is equal to or exceeds ten billion dinars (10.000.000.000 D A).
- If the production or national instrument is upgraded, if the amount of the transaction is equal to or greater than ten billion dinars (10.000.000.000D A).
- When the legislative or regulatory text grants a public institution of an industrial and commercial nature an exclusive right to perform the function of the public service, or when the institution carries out all its activities with public bodies and departments and public institutions of an administrative nature.

Thus, simple consent is an ambiguous method because the legislator has defined his or her cases and has not precisely defined his or her procedures⁹. In the face of this legal vacuum, he or she has imposed field reality on his or her logic. The contracting interests have adopted a special procedural system whereby the consensual contracting process is translated into three phases: advocacy, negotiation and contracting¹⁰.

Although the procedure of simple consent has been justified in exclusive cases, the legislature has never freed the administration. However, this procedure is governed by restrictions within the legal limits provided for in article 50 of Presidential Decree No. 15-247, namely¹¹:

- Identification of needs within the provisions of article 27 except in exceptional cases provided for in this Decree.
- Ascertain professional, technical and financial capabilities as defined in article 54 of this Decree.
- The choice of an economic worker with an offer of economic benefits as defined in article 72 of this Decree.
- Negotiations shall be organized in accordance with the conditions laid down in article 52, paragraph 6, of this Decree.
- The establishment of negotiations on financial presentation on the basis of reference prices.

What can be seen is that the principle of competition does not exist in a simple consensual procedure because it does not involve any manifestation of publicity, including proper publicity or press publicity. In cases specified in article 49 of Presidential Decree 15-247, which includes the regulation of public transactions and public utility authorizations¹².

We therefore question the criteria established by the legislator in selecting the contractor through a simple consent procedure as we are here moving away from formal competition advocacy, outside the above-mentioned article 50 criteria relating to the contractor's capabilities and the presentation of an offer with economic advantages. Are these criteria sufficient in the contractor's selection? That is what we will explain later.

2.1.2 Lack of equality in the simple consent procedure and its impact on competition

The principle of equality is one of the most important principles of the law in general, and we find it consistent in all constitutional and legal systems and it is enshrined before the administration in the equality of the beneficiaries of the service of the public utility¹³.

The general dealer shall remain in an impartial position in respect of applications and submissions. He may not, as a general asset, prefer and distinguish between exhibitors except in the frameworks specified by law, which imposes the principle of equality¹⁴.

On this basis and in conformity with articles 41, 49 and 50, article 5 does not compete in the manner of advocating contracting¹⁵. In this respect, we refer to article 49, paragraph 6, of this Decree, which gives a privilege to public enterprises of an industrial and commercial nature in two cases¹⁶:

First case: When a legislative or regulatory text grants a public enterprise of an industrial and commercial nature an exclusive right to perform the public service function.

Second case: When this institution carries out all its activities with public bodies and departments and public institutions of an administrative nature.

Thus, exclusively, the monopoly of a particular situation does not mean the existence of institutions active in the same field. The legal text recognizes the granting of the exclusive right to perform the public service, There is no doubt that giving priority to certain public institutions and licensing them under a statutory or regulatory provision to contract in a simple consensual manner would compromise the principle of equal treatment of candidates, thus the lack of competition, as confirmed by Prof. Dr. Amar Boudiaf, as well as Prof. Dr. Nadia Darifi and Prof. Dr. Iadjlet Fawaz¹⁷.

2.2 Criteria for customer selection in the absence of competition within the simple consensus procedure

The problem of lack of competition and equality in the simple consent procedure raises forms of how the contractor's choice within this procedure known as exceptional specificity and contractual flexibility, outside of competition and equality.

The same question arises as to what criteria are adopted in the selection of the contractor within the simple consent procedure as an exception to the general rule of conclusion? Is it considered sufficient for the size of this procedure?

With reference to articles 49 and 50 of Presidential Decree 15-247, we will try to disclose the criteria adopted by the legislator in selecting the contractor for the Administration¹⁸.

2.2.1 Monopoly Criteri

Here, the economic contractor is selected on the basis of monopoly status as a sole dealer, and this service can only be performed through this dealer.

However, in the case of protection of exclusive rights, technical considerations or cultural and artistic considerations, the services concerned with cultural and artistic considerations are clarified by a joint decision of the Minister in charge of finance and culture. This ambiguity in the text raises many questions about the subject matter of these services and whether they actually require recourse to simple consent and derogation from the general rule, However, when reviewing some joint ministerial decisions on the identification of services related to cultural or artistic considerations, we find them vague "services that can only be performed by creative artists chosen for themselves", "acquisition of movable cultural property"¹⁹.

2.2.2 Legislative or regulatory text Criteri

In this case, a public institution is granted an exclusive right to perform the public service and conclude a deal with it in a simple consensual manner, Although it does not occupy monopolistic status, there are many institutions active in the same field as the selected public institution and these institutions are determined by a joint decision of the Minister in Charge of Finance and the Minister concerned, Thus, the public institution is selected as a contracting party by law, the legislative or regulatory text and here on any basis that is chosen by this institution, The regulatory text, unlike the legislative text, escapes Parliament if Parliament's role is effective²⁰.

2.2.3 Activity Criteri

This criterion, which does not disappear when we speak of the General Annex, is always there when we speak of the Department's activity and when we also speak in the public interest , Thus, when public institutions of an industrial and commercial nature carry out all their activities with public bodies and departments and public institutions of an administrative nature, they can be contracted through simple consent procedure.

The forms presented in the simple consent procedure for the selection of the contractor outside these cases remain any urgency cases²¹ according to paragraph 2.3.4 and the status of the upgrade of production or the national production instrument within paragraph 5, all of which is under article 49 of Presidential Decree 15-247.

Other criteria can be inferred by article 50, which defines legal limits established by the regulator of the Public Transactions Act 15 - 247 as a restriction on management when resorting to a public transaction by means of a simple satisfaction procedure.

2.2.4 Economic Customer Capacity Criteri

Here, when choosing the contractual interest of the dealer, you must ascertain the capacity set out by the legislator in the text of article 54 of this decree, and therefore what capabilities must be ascertained?

According to the preceding article, the contracting authority must ascertain all technical capabilities related to human and material means, professional references and professional capabilities related to qualification certificate, classification and quality certificate if required and financial capabilities, all matters relating to financial guarantees for the execution of the transaction such as bank references, This is in order to ensure the execution of the transaction²².

2.2.5 Criteri of economic advantages

The contracting interest shall choose an economic worker with economic advantages, subject to the conditions laid down in article 72 of Presidential Decree 15 - 247.

On this basis, can we say that the preceding criteria are sufficient as a guarantee of a simple consent procedure that is outside the rules of competition and equality without prejudice to public money and suspicion of administrative corruption?

Thus, the absence of a formal call for competition²³ in a procedure of simple consent size makes us think about the procedures followed by the contracting interest for how to invite the dealer and how to choose him or her and the grounds for doing so.

However, by reading in the text of article 41 governing the Transaction Act, the procedure of consent in its form was considered a "lex specialis" transaction for a single contractor without the formal call for competition, and thus what procedures are in place to allocate the public transaction through a simple consent procedure?

The absence of formal competition advocacy makes the contracting interest invite whoever it deems capable of completing the process it wants to carry out, whether by calling in writing, by telephone, or by any other means of communication²⁴, and from whom on what basis is a transaction invited without a transaction and how is it chosen away from suspicion of administrative corruption?

The fact that the regulator of the Public Transactions Act restricts the contracting interest to legal limits whereby an economic worker who offers an economic benefit after having ascertained his or her financial, professional and technical capabilities is selected has not been fully restricted by the fact that there are many clients who can meet these conditions and who can be contacted.

The term "negotiation", which is essential before the contracting stage in a procedure of simple consensus and which may be conducted in large amounts, looms over several questions. On the one hand, on the other hand, to organize negotiations by a commission appointed and chaired by the contracting interest, on the other hand, what are the guarantees of the contracting interest's obligation in accordance with public interest considerations to ensure the effectiveness of public requests and the proper use of public money, in inviting, negotiating and choosing the offer of the contractor?

3. Urgent Urgency Problem in Simple Consensus Procedure

Urgent urgency poses several problems in the level of conclusion of public transactions within the simple procedure of consent.

We will therefore try to examine the urgency of article 49, paragraph 2, of this Decree and compare it with the urgency of article 12 within the special procedures. Why does the legislature regulate public transactions in two distinct cases?

3.1 Urgent Urgency of public transactions 15 - 247.

3.1.1 Urgent urgency under the simple consensus procedure

The urgency of article 49, paragraph 2, of this Decree, is one of the cases of recourse by the contracting interest to the simple consent procedure, which is subject to the limits provided for in article 50, Upon reading the second paragraph of article 49, the legislator established conditions for asylum in the contracting interest of applying this situation²⁵:

- Risk of investment or property in the contracting interest or public security.
- There is an imminent threat to a property or investment that may be reflected in the field.
- Contracting interest's inability to adjust to the timelines of public transactions procedures.
- The contracting interest's unpredictability of the circumstances causing the urgency.
- The state of urgency is not the result of procrastination by the contracting interest.

3.1.2 Urgent Urgency under article 12 of the Regulation of Public Transactions 15 – 247

This case is considered a justification for the contracting interest to execute the transaction before the conclusion of the transaction and this is a departure from the general rule that it is originally the stage of conclusion and then followed by the stage of implementation²⁶.

- Conditions of urgent urgency within the special procedures in article 12

When reading article 12 and in order for the contracting interest to apply this special procedure²⁷, we find the same conditions established in case of urgency through a simple consent procedure, that is, to repeat the conditions set out in article 12 in the second paragraph of article 49, and therefore what limits has been imposed by the regulator of transaction law on the contracting interest to exercise this procedure.

- Limits imposed on the contracting interest in the exercise of the urgent urgency procedure

The contracting interest is obliged to respect legal limits for the application of urgent urgency within the special procedures set out in article 12 of this Decree:

- Authorization to proceed with the implementation of services prior to the conclusion of the transaction granted to the contracting interest by a reasoned decision of the official concerned according to the level of the public transaction (Public Authority Officer, Minister, Wali, President of the Municipal People's Assembly).
- Services are limited to what is necessary only to meet urgent circumstances.
- Proof of agreement between the parties through exchange of letters.
- Conclusion of the public transaction by way of settlement within 6 months from the date of signature of the rapporteur.

- Control of this special procedure

Public transactions are entered into in exchange for financial transactions with an economic dealer. The matter is related to public funds within the expenses of the State. Therefore, there must be control over the various operations carried out. This special procedure is not without control. The contracting interest is obliged to send a copy of the decision to the Accounting Board, the Minister in charge of Finance, the authority to control public transactions and the mandates of the General Facility of Finance.

If the operation exceeds the amounts specified in article 13 of this Decree, it must be submitted to the competent authority for external Control²⁸.

3.2 comparing between urgency and urgency in the procedure of simple consent article 49 and the special procedures under article 12

In order to establish the problem at the level of urgency of urgency as a case of simple consent in public transactions under the aforementioned Presidential Decree 15-247, the above-mentioned analysis must be traced.

3.2.1 Conclusions on conformity of articles 49 and 12

It seems at first glance that the urgency of urgency within the simple consensual procedure mentioned in article 49, paragraph 2, is the same as the urgency of urgency in article 12, and this is for those who have not carefully considered or analysed both texts, but on a good reading we can conclude the following²⁹:

- Order to start service (O S S)

Within the simple consent procedure, after the conclusion of the transaction, that is, after the completion of all the stages of the contract from the beginning of the invitation to contract and the selection of the client to the Controller's visa on the obligation of maintenance. In case of urgency under article 12, the commencement of services after the authorization of the official concerned shall be pursuant to a reasoned decision to commence the implementation of services prior to the conclusion of the transaction.

-Nature of the services

In the case of urgent urgency within the simple consensus procedure, it is not clear what contrary to the urgent nature of the services in article 12, which is limited to what is necessary to meet the circumstances of the urgency, the question arises here, what is necessary in the services and what is unnecessary? Can services in the simple consent procedure be considered as holistic services without specification?

- Contractor's choice

In a simple consent procedure, it is based on legal limits established as a limitation on the contracting interest as mentioned earlier, but in the case of urgent article 12, on what basis is chosen.

- Control of the operation

In the simple consent procedure is subject to the competent Public Transactions Committee as a tribal external control mechanism on the terms book contrary to the urgency set out in article 12, which requires external control after the fact that a copy of the reasoned decision is sent to the accounting board Minister of Finance, Public Transactions Control Authority and General Facility Mandates the General Inspectorate of Finance, and may be subject to the competent external oversight bodies if the operation exceeds the financial threshold specified under Article 13, and any control over the implementation of services prior to completion!

- Identification of needs

The identification of needs³⁰ is not binding in article 12, but in the procedure of simple consent, the contracting interest must determine its needs in accordance with the provisions of article 27.

From this, it may be said that any urgency of urgency in cases of simple consent awaits the preparation of a clauses book in accordance with the determination of the needs of the contracting interest and must be approved by the competent transaction committee and awaits the invitation to contract, the selection of the contractor, the conduct of negotiations, in accordance with legal requirements, the conclusion of the contract and the Controller's visa³¹, and awaiting an order for the commencement of services s position ", the fact that the transaction takes effect only after the Controller has been designated as a guarantee of maintenance on the subject of services, is of the utmost urgency awaiting all such action.

3.2.2 The existence of two urgent cases with the same conditions and various procedures that call for reflection

According to the foregoing, we find a difference between a state of urgency within the simple procedure of consent and the state of urgency contained in article 12, and therefore on what basis can the contracting interest adapt the procedure of urgency?

The overlap between the two cases and the ambiguity of the text sometimes puzzle the official over the contracting interest in taking appropriate action. Therefore, most administrative interests at the decentralized level avoid resorting to a simple procedure of consent except in the case of monopoly status.

When we examine the main differences between the previous two urgent cases, we find that the urgency requirements are combined in both cases and the obvious difference in the procedures followed to implement the services, the method of finalization, the choice of the client and the nature of the services. and thus the ambiguity and similarities of the text make the overlap in proceedings, which has legal gaps in the legal text, an obstacle to its application, or open the door to drain public money that has become subject to serious violations.

For example, Algeria's practical situation was caused by the regulatory vacuum of public transactions relating to the conclusion of public transactions in the context of the prevention of the spread of the COVID-19 pandemic, as if the regulators had recognized in themselves the inadequacy of the regulatory text and the existence of vacuums requiring a change in their beliefs.

Presidential Decree No. 20-237 of 31 August 2020 defines special measures adapted to the procedures for concluding public deals in the context of preventing and combating the spread of the COVID-19 pandemic.

It seems at first glance that this decree came new³², but which new?

- Activate the urgent urgency of Article 12 in an implied manner the implementation of services prior to the conclusion of the public transaction.
- Non-observance of articles 21 and 27 of Presidential Decree 15 - 247 and gave the possibility of the contracting interest to make several requests of the same nature and with the same client by reasoned decision, This was an exception to the text of article 21. and prohibited in the text of article 27 of Presidential Decree 15-247, with certain conditions that cannot be infringed, this is to give more flexibility to the public transaction.
- Resorting to simple consent to conclude public deals in the context of preventing and combating the spread of the coronavirus pandemic as a 19 delegation, as if the coronavirus epidemic had become a case of simple consensus but with diluted limits and negotiations based on market-traded prices rather than reference prices.

Thus, the regulator of the deal law gave more softness to conclude deals under the coronavirus pandemic, which eliminates more competition and equality, but the exceptional justification necessitated it.

4. conclusion

According to the above analysis, the absence of a formal call for competition in the simple consent procedure does not give the contractor's interest all freedom to contract, but the regulator of the transaction law restricts it to limits that must not be contravened, but these limits remain insufficient in a procedure of simple consent size, As for the urgency of simple consensus and urgency within the special procedures, the conditions of urgency and different procedures were similar to thought-provoking, in order to give greater guarantees of access to public requests and to protect public funds from any suspicion of administrative corruption.

- The most important results are accessible:

1. The absence of a formal call for competition does not entirely free the contractor's interest in contracting, but is bound by limits that are regarded as limitations on recourse to the simple consent procedure.
2. The absence of equality in the case of dealing with a public institution of an industrial and commercial nature and the granting of a privilege as an exclusive right to other persons by virtue of the granting of the legislative or regulatory text, and by the provision of activity wholly exercised with public bodies and departments and public institutions of an administrative nature.
3. Criteria adopted in the choice of the client in the absence of competition, especially when calling for a contract and conducting negotiations, lack rules requiring the contracting reformer to follow precise procedures.
4. The existence of two urgent cases in two different articles under the same conditions and with different procedures is ambiguous in the light of the ambiguity of the legal text.
5. Contracting Interest Officer How to Justify Recourse to Urgent Urgency within Simple Consent Procedure or Special Procedures.
6. Is there a urgent urgency that requires the transaction to be executed before concluding and departing from the original contract At the same time, the urgency of urgency is on the same terms but resorting to a simple consensus procedure requiring the client's invitation, Negotiations, selection of contractor, conclusion of contract, Controller's visa for obligation of maintenance subject to services, Ordering work to start and the deal to come into force, is there a urgency of urgency that requires execution before finalization and urgency of salt waiting to conclude and then execution.
7. The practical situation in which the regulator signed a law on public transactions in the light of the coronavirus pandemic (COVID-19) When the organization of deals could not accommodate this situation, the legislator forced the issuance of presidential decree 20-237 of 31 August 2020 to break out of this exceptional circumstance, but did not come up with a new text level but implied urgency and gave the green light to the contracting interest to resort to a simple consensus

procedure to conclude public deals that required coping with the coronavirus pandemic.

- According to previous results, we can come up with these proposals:

- In order to achieve competition within the simple consent procedure, the contracting interest's obligation requires that the public interest be taken into account within the framework of the dictates of moral conscience in order to protect public money.
- Review of article 52, paragraph 6, on negotiations. How does a contracting interest officer appoint a negotiating committee as its Chairman?
- To give the most assurance of the contractor's choice, especially in the cases mentioned in article 49, paragraph 2, 3 and 4, on urgency, urgent supply, priority projects and national urgency, and paragraph 5, on the status of the upgrade of national production.
- Review article 49, paragraph 6, concerning the granting of a concession to public enterprises of an industrial and commercial nature and why exactly is this type of enterprise in contracting?
- Review article 49, paragraph 2, adopting a state of urgency, which is the fact that the urgent urgency requirements are not commensurate with the simple procedure of consent and only with the state of urgency set out in article 12.
- Lifting the ambiguity of the text level and determining precise procedures commensurate with the size of the simple consent procedure in which some of the processes performed in large amounts may be equal to or greater than 10,000,000,000 dinars. How can it be reasonable to regulate such a procedure with only two legal articles, namely article 49 and article 50.
- Resorting to a simple consensus procedure in the case of the coronavirus epidemic, according to Presidential Decree 20-237, requires amending article 49 or amending article 12 in line with the epidemic situation.

5. list of references

- Accounting Board for 2019, Official Gazette No. 75, dated 4 December 2019.
- Amar Boudiaf, Explanation of the Organization of Public Transactions, in accordance with Presidential Decree 15-247, section I, p. 5, Djoseur for Publication and Distribution, 2017.
- Amar Boudiaf, , the brief in Administrative Law, T3, Djoseur for Publication and Distribution, Algeria, 2013
- Bassam al-Kray, Principle of Competition in Public Transactions, Journal of Studies, Faculty of Law, University of Safqas, Tunisia, 2007. Amar Boudiaf, , the brief in Administrative Law, T3, Djoseur for Publication and Distribution, Algeria, 2013.
- Ben Mohammed Mohammed, Halimi Manal, Consensus Deals in Algeria: A Method of Concluding Vague Legal Controls, Journal of Policy and Law Books, No. 13 Jan 2015.
- Boukerch Belkacem, Financial Standard against the Legal System of Public Transactions Contracts in Algeria - In accordance with the provisions of Presidential Decree 15-247 -, Memorandum within the Requirements of Master's Degree, State and

Institutional Specialization, Faculty of Law and Political Science, Zaian Achour University djelfa, Algeria, 2018-2019.

- Brahim Boulifa, *Marchés publics*, vol1, Berti Edition ,Alger.
- Habab Ahmed, comparing the urgency of the urgency contained in articles 12 and 49 of Presidential Decree 15-247, which includes the regulation of public transactions and the mandates of the public facility, folded for employees and students interested in the field of public transactions, March 2020.
- Khadri Hamza, Yasmina Diaf, Limited Competition in Public Transactions, *Journal of Legal Studies and Research*, vol. 5, No. 1, 2020.
- LAW No. 06-01 of 20 February 2006 on the prevention and control of corruption.
- Maamari Abdelnasser, *Ways to Conclude Public Deals in Algeria: Between Development Challenges and Deviations of Corruption*, *Journal of Political Science and Law* , No. 08, Journal 02 April 2010, Arab Democratic Center Germany-Berlin.
- Nadia Drifi, Ladjlahat Fawaz, Public procurements conclusion by agreement what's new?? Under presidential decree n° 15-247, *Law Voice journal*, vol6, N° 02/November 2019.
- Presidential Decree 15-247 of 16 September 2015, on the regulation of public transactions and the mandates of the Public Utility.
- Presidential Decree 20-237 of 31 August 2020 establishing special measures adapted to the procedures for concluding public deals in the context of preventing and combating the spread of the COVID-19 pandemic.
- the Joint Ministerial Decision of 30 June 2014 defines services for cultural and artistic considerations that may be the subject of transactions by simple consent.

Margins

¹ Ben Mohammed Mohammed, Halimi Manal, *Consensus Deals in Algeria: A Method of Concluding Vague Legal Controls*, *Journal of Policy and Law Books*, No. 13 Jan 2015, p. 174.

² Articles 39 and 41 of Presidential Decree 15-247 of 16 September 2015, on the regulation of public transactions and the mandates of the Public Utility.

³ Article 9 of Act No. 06-01 of 20 February 2006 on the prevention and control of corruption

⁴ Article 39 of the Presidential Decree 15-247 , op. cit

⁵ Article 41 of the Presidential Decree 15-247, op. cit

⁶ Ben Mohammed mohammed, Halimi Manal, op. cit., p. 175.

⁷ Nadia Drifi, Ladjlahat Fawaz, *Public procurements conclusion by agreement what's new?? Under presidential decree n° 15-247*, *Law Voice journal*, vol6, N° 02/November 2019, p. 221.

⁸ Article 49 of the Presidential Decree 15-247, op. cit .

- Amar Boudiaf, *Explanation of the Organization of Public Transactions, in accordance with Presidential Decree 15-247, section I, p. 5*, *djousor for Publication and Distribution*, 2017, p. 306, 307.

- Maamari Abdelnasser, *Ways to Conclude Public Deals in Algeria: Between Development Challenges and Deviations of Corruption*, *Journal of Political Science and Law* No. 08, Journal 02 April 2010, Arab Democratic Center Germany-Berlin, p.255

- ⁹ Ben Mohammed mohammed, Halimi Manal, op. cit., p. 181.
- ¹⁰ Brahim Boulifa, *Marchés publics*, vol1, Berti Edition ,Alger, p60
- ¹¹ Article 50 of the Presidential Decree 15-247, op. cit.
- Nadia Drifi, Ladjlahat Fawaz, op. cit, P 226 ,227 .
- ¹² Khadri Hamza, Yasmina Diaf, Limited Competition in Public Transactions, *Journal of Legal Studies and Research*, vol. 5, No. 1, 2020, p. 116, 117.
- ¹³ Amar Boudiaf, , the brief in *Administrative Law*, T3, Djoseur for Publication and Distribution, Algeria, 2013, p. 440.
- ¹⁴ Bassam al-Kray, Principle of Competition in Public Transactions, *Journal of Studies*, Faculty of Law, University of Safqas, Tunisia, 2007, p. 13.
- ¹⁵ Articles 5, 41, 49 and 50 of Presidential Decree 15 – 247,op.cit.
- ¹⁶ Article 49, paragraph 6, of Presidential Decree 15 – 247,op.cit.
- ¹⁷ - Amar Boudiaf, *Explanation of the Organization of Public Transactions*, op, cit ,p 230,231.
- Nadia Drifi, Ladjlahat Fawaz, op. cit, P 226.
- ¹⁸ Articles 49 and 50 of Presidential Decree 15 – 247, op.cit
- ¹⁹ Article 2 of the Joint Ministerial Decision of 30 June 2014 defines services for cultural and artistic considerations that may be the subject of transactions by simple consent.
- ²⁰ Article 49, paragraph 6, of the Presidential Decree 15-247, op.cit
- ²¹ Article 49, paragraph 2, 3, 4 and 5, of Presidential Decree 15-247, op.cit
- ²² Article 54, of Presidential Decree 15-247, op.cit.
- Amar Boudiaf, *Explanation of the Organization of Public Transactions*, op, cit ,p 273.
- ²³ Article 41, of Presidential Decree 15-247, op.cit.
- ²⁴ Ben Mohammed Mohammed, Halimi Manal , op , cit , p ,182 .
- ²⁵ Article 49, paragraph 2, of Presidential Decree 15 – 247, op , cit.
- ²⁶ Article 3, of Presidential Decree 15 – 247, op , cit.
- ²⁷ Article 12, of Presidential Decree 15 – 247, op , cit
- ²⁸For the financial threshold see , Article 13, of Presidential Decree 15 – 247, op , cit
- ²⁹ Habab Ahmed, comparing the urgency of the urgency contained in articles 12 and 49 of Presidential Decree 15-247, which includes the regulation of public transactions and the mandates of the public facility, folded for employees and students interested in the field of public transactions, March 2020, p. 1-3.
- For further clarification on shortcomings and abuses in the level of public transactions of some public institutions of an administrative nature, see the report of the Accounting Board for 2019, Official Gazette No. 75, dated 4 December 2019.
- ³⁰ Article 50, of Presidential Decree 15 – 247, op , cit
- ³¹ Boukerch Belkacem, Financial Standard against the Legal System of Public Transactions Contracts in Algeria - In accordance with the provisions of Presidential Decree 15-247 -, Memorandum within the Requirements of Master's Degree, State and Institutional Specialization, Faculty of Law and Political Science, Zaian Achour University djelfa, Algeria, 2018-2019, p. 52.
- ³² Presidential Decree 20-237 of 31 August 2020 establishing special measures adapted to the procedures for concluding public deals in the context of preventing and combating the spread of the COVID-19 pandemic